

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Interstate Fire & Casualty Company, Inc.,
an Illinois corporation,

No. CV 09-01405-PHX-NVW

10 Plaintiff and Counterdefendant,

ORDER

11 vs.

12 The Roman Catholic Church of the Diocese
13 of Phoenix, a corporation sole, by and
14 through Bishop Thomas J. Olmsted, his
predecessors and successors,

15 Defendants and Counterclaimants.

16
17 Before the Court is the Diocese of Phoenix's Motion for Partial Summary
18 Judgment That There Will Be No Apportionment of the Settlements Between Covered
19 and Uncovered Amounts (Doc. 118) and Interstate Fire's Request for Oral Argument on
20 Defendant's Motion for Partial Summary Judgment That There Will Be No
21 Apportionment of the Settlements Between Covered and Uncovered Amounts (Doc.
22 130). The Diocese argues that the four underlying settlements for which it is claiming
23 indemnification under Interstate Fire's insurance policy should not be apportioned
24 because there is no reasonable basis to do so. The Court agrees, and will accordingly
25 grant the Diocese's motion.

26 The pleadings in the underlying settled matters alleged multiple theories of
27 liability for the Diocese, including both negligence and intentional tort theories.
28 However, the settled claims were against the Diocese only, and the alleged injury

1 underlying each settled claim resulted from sexual abuse by Diocese priests and a
2 layworker. Apportionment of a settlement may be appropriate where the Court has a
3 reasonable basis for apportioning between covered and uncovered claims, such as where
4 a settlement includes payment for actions taken by both insured and non-insured actors.
5 *See, e.g., Caterpillar, Inc. v. Great Am. Ins. Co.*, 62 F.3d 955 (7th Cir. 1995)
6 (apportioning settlement that included payment for actions taken by insured directors and
7 uninsured company). However, apportionment is not appropriate where the complaints
8 underlying the settled matters simply alleged multiple theories of liability, not multiple
9 injuries or injuries inflicted by both insured and uninsured actors.

10 At this stage in the pleadings, the Court has not yet determined whether the
11 Diocese's actions were merely negligent, or if they amounted to intentional conduct
12 because the Diocese was substantially certain that its actions would result in the injuries
13 claimed in the settled matters. If the Diocese was merely negligent, the injury stemming
14 from the Diocese's conduct will constitute a covered occurrence under the insurance
15 policy, and Interstate Fire will be liable for the settlement payouts. If the Diocese is
16 found to have acted in such a way that the harm resulting here was substantially certain,
17 thus imputing intentionality to its actions, there will be no covered occurrence;
18 accordingly, Interstate Fire will not be liable for the settlement payouts. Whether the
19 Diocese's conduct is determined to have been negligent or intentional is an issue to be
20 decided by later motion for summary judgment or at trial. The unresolved issue at this
21 stage thus has no relevance to the apportionment of the settlement claims; there is no
22 allegation that there are some injuries that are covered and others which are not, nor is
23 there any allegation that some actors were insured and others were not. Rather, the facts
24 are clear that there is one injury underlying each settlement (the abuse), and one insured
25 defendant to the settlement (the Diocese).

26 Interstate Fire has presented no authority contradicting the Diocese's position that
27 apportionment is not appropriate in this context. Rather, Interstate Fire focuses its
28 response on arguing that there was no covered occurrence at all because the Diocese had

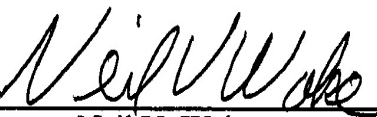
1 sufficient information to be substantially certain that its actions would lead to the harm
2 which formed the basis for the underlying settlements. While this may prove to be the
3 case, it is irrelevant to the question of apportionment and the subject of this motion; either
4 there will be a covered occurrence and Interstate Fire will be liable for the settlements
5 paid, or there will be no covered occurrence and no liability for Interstate Fire.

6 For these reasons, the Court will grant the Diocese's motion for partial summary
7 judgment on the issue of apportionment. Because both parties have submitted legal
8 memoranda and oral argument would not aid the Court's decisional process, Interstate
9 Fire's request for oral argument on the motion (Doc. 130) will be denied.

10 IT IS THEREFORE ORDERED that the Diocese of Phoenix's Motion for Partial
11 Summary Judgment That There Will Be No Apportionment of the Settlements Between
12 Covered and Uncovered Amounts (Doc. 118) is granted.

13 IT IS FURTHER ORDERED that Interstate Fire's Request for Oral Argument on
14 Defendant's Motion for Partial Summary Judgment That There Will Be No
15 Apportionment of the Settlements Between Covered and Uncovered Amounts (Doc. 130)
16 is denied.

17 Dated this 20th day of January, 2012.

18
19 
20 _____
21 Neil V. Wake
22 United States District Judge
23
24
25
26
27
28